

MARY C. CORPORON #734  
Attorney for Defendant  
CORPORON, WILLIAMS & BRADFORD, P.C.  
405 South Main Street, Suite #700  
Salt Lake City, Utah 84111  
Telephone: (801) 328-1162  
Facsimile: (801) 328-9565

---

IN THE UNITED STATES DISTRICT COURT,  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

TOMMY LINDON WILLARD and  
DAVID WARREN GARNER,

Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**ORDER CONTINUING TRIAL**

Case No. 1:05 - CR - 00086 DAK

Judge Dale Kimball

---

BASED UPON THE MOTION of the Defendant, David Warren Garner, to continue  
the trial herein, or in the alternative, motion to sever, and for good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The trial presently scheduled to go forward in this case on Monday, August 28,  
2006 is hereby continued, as to Defendant Garner, to November 29, 2006 at 8:30 a.m .

2. The time between the date of this motion, and the determination of Defendant Garner's competency assessment, is hereby excluded from the time limits within the Speedy Trial Act by reason of likely defense motions and the need to resolve the same.

DATED this 25th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive, slightly slanted style.

---

DALE KIMBALL  
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

BRUCE W. CONLEY,	)	
	)	
Plaintiff,	)	Case No. 1:06-CV-90 DAK
	)	
v.	)	District Judge Dale Kimball
	)	
WEBER COUNTY SHERIFF et al.,	)	<b>O R D E R</b>
	)	
Defendants.	)	Magistrate Judge Brooke Wells

---

Plaintiff, Bruce W. Conley, filed a *pro se* prisoner civil rights complaint.<sup>1</sup> The Court has already granted Plaintiff's request to proceed without prepaying the entire filing fee.

Even so, Plaintiff must eventually pay the full \$350.00 filing fee required.<sup>2</sup> Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."<sup>3</sup> Under this formula, Plaintiff must pay \$1.22. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee, the complaint will be dismissed.

Plaintiff must also complete the attached "Consent to Collection of Fees" form and submit the original to the inmate

---

<sup>1</sup>See 42 U.S.C.S. § 1983 (2006).

<sup>2</sup>See 28 *id.* § 1915(b)(1).

<sup>3</sup>*Id.*

funds accounting office and a copy to the Court within thirty days so the Court may collect the balance of the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Although the Court has already granted Plaintiff's application to proceed *in forma pauperis*, Plaintiff must still eventually pay \$350.00, the full amount of the filing fee.

(2) Plaintiff must pay an initial partial filing fee of \$1.22 within thirty days of the date of this Order, or his complaint will be dismissed.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

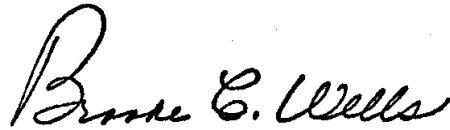
(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 25th day of August, 2006.

BY THE COURT:

A handwritten signature in cursive script, reading "Brooke C. Wells". The signature is written in black ink and is positioned above a horizontal line.

---

BROOKE C. WELLS  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Bruce W. Conley (Case No. 1:06-CV-90 DAK), understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Bruce W. Conley, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of \$1.22, which is 20% of the greater of:

- (a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or
- (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

---

Signature of Inmate  
Bruce W. Conley

FILED  
2006 AUG 24 P 3:21  
U.S. DISTRICT COURT  
UNITED STATES DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

DISTRICT OF UTAH

(For Revocation of Probation or Supervised Release)

Benjamin David Cecala BY:

DEPUTY CLERK

Case Number: DUTX 2:00CR000400-001

USM Number: 08371-081

Tiffany Johnson

Defendant's Attorney

THE DEFENDANT:

☒ admitted guilt to violation of condition(s) 2,3,4 of the Petition of the term of supervision.

☐ was found in violation of condition(s) \_\_\_\_\_ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1.	The defendant failed to inform the USPO of his conduct with law enforcement and subsequent arrest on 05/15/2006.	
2.	The defendant failed to maintain full-time employment.	
3.	The defendant failed to pay his fine, as directed.	

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) \_\_\_\_\_ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: \_\_\_\_\_

8/16/2006

Defendant's Date of Birth: \_\_\_\_\_

Date of Imposition of Judgment

Defendant's Residence Address: \_\_\_\_\_

*Tena Campbell*  
Signature of Judge

Tena Campbell

District Court Judge

Name of Judge

Title of Judge

8-24-2006

Date

Defendant's Mailing Address: \_\_\_\_\_

DEFENDANT: Benjamin David Cecala  
CASE NUMBER: DUTX 2:00CR000400-001

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

TIME SERVED

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL



DEFENDANT: Benjamin David Cecala  
CASE NUMBER: DUTX 2:00CR000400-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
**18 MONTHS**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Benjamin David Cecala  
CASE NUMBER: DUTX 2:00CR000400-001

Judgment—Page 4 of 6

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing.
2. The defendant shall not use or possess alcohol, nor frequent businesses where alcohol is the chief item of order.
3. The defendant shall maintain full-time, or be actively seeking verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the USPO.
4. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
5. The defendant shall reside in a community corrections center for a period of up to 120 days, with work release, educational release, medical release, release to attend religious services, release to participate in treatment, or other approved leave as deemed appropriate by the probation office or community correction center.

DEFENDANT: Ben David Cecala  
CASE NUMBER: DUTX 2:00CR000400-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$ 1,000.00	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$ 0.00	\$ 0.00
--------	---------	---------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Benjamin David Cecala  
CASE NUMBER: DUTX 2:00CR000400-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below); or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay.
- F ☒ Special instructions regarding the payment of criminal monetary penalties:  
The Court reinstates the remaining balance of the \$1,000 fine, which was imposed on 2/7/2001.  
The Court also reinstates the \$100 SPA which was also imposed on 2/7/2001.

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK COLONNA,

Defendant.

---

MEMORANDUM DECISION AND  
ORDER MODIFYING TERM OF  
IMPRISONMENT TO TIME SERVED

Case No. 2:00-CR-411 TS

This matter is before the Court on Defendant's Motion for Furlough and/or Early Release, filed August 28, 2006.<sup>1</sup> Defendant is currently in custody at the BOP Taft Correctional Institution in California, and is scheduled to be released on or about September 22, 2006.

Defendant represents that his mother, Jean Colonna, recently passed away. Defendant has provided a letter from the funeral home stating that her funeral will be held on September 1, 2006 in Magna, Utah.

Defendant has served nearly all of this 46-month sentence. Defendant is not eligible for either furlough or release to a half-way house. The Court has considered Defendant's history

---

<sup>1</sup> Docket No. 172.

while incarcerated at Taft, including reports regarding an altercation there in 2005 involving Defendant, and finds that early release is justified.

Having considered the motion and the record before it, the Court will grant Defendant's Motion and modify the term of imprisonment to time served.

Therefore, it is hereby

ORDERED that Defendant's Motion for Furlough and/or Early Release (Docket No. 172) is GRANTED. It is further


ORDERED that Defendant's period of incarceration is modified to time served effective immediately, and he is to be released forthwith.

Nothing in this Order negates Defendant's obligations under supervised release.

SO ORDERED.

DATED this 29th day of August, 2006.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

UNITED STATES OF AMERICA, ex rel.  
GILBERT TRUJILLO, et al.,

Plaintiffs,

vs.

GROUP 4 FALCK, et al.,

Defendants.

ORDER

Case No. 2:02-CV-162 TC

---

A hearing on the Defendants' Motion for Summary Judgment is scheduled for Friday, September 1, 2006. Plaintiffs have filed a motion to strike the Defendants' Motion and to strike the hearing based on a June 2006 United States Supreme Court decision. Plaintiffs claim that the decision in Burlington Northern & Santa Fe Railway Company v. White, 126 S. Ct. 2405 (June 22, 2006), mandates denial of the Defendants' Motion. Plaintiffs' Motion To Strike Summary Judgment Motion And Hearing is DENIED. The hearing will go forward as planned.

IT IS SO ORDERED this 29th day of August, 2006.

BY THE COURT:



TENA CAMPBELL  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

<p>EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,</p> <p style="text-align:right">Plaintiff,</p> <p>ANDREA LIENDER,</p> <p style="text-align:right">Plaintiff-Intervenor,</p> <p style="text-align:center">vs.</p> <p>BODY FIRM AEROBICS, INC., d/b/a GOLD'S GYM,</p> <p style="text-align:right">Defendant.</p>	<p style="text-align:center">ORDER</p> <p style="text-align:center">Case No. 2:03 CV 846 TC</p>
--	---

This matter is before the court on Plaintiff and Plaintiff-Intervenor's Motion for Expedited Status Conference and Continuance of Trial Date. For the reasons set forth Plaintiffs' memoranda addressing this issue, the court strikes the trial date in this matter. The court previously scheduled a final pretrial conference for September 6, 2006, from 3:30 p.m. to 4:00 p.m. The court orders that the previously scheduled pretrial conference be converted to a status conference. At the September 6 hearing, the court will discuss the status of this litigation, set a new trial date, and set any additional deadlines that may be necessary.

Plaintiff and Plaintiff-Intervenor's Motion for Expedited Status Conference and Continuance of Trial Date (dkt. #273) is GRANTED.



SO ORDERED this 29th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge

United States Probation Office  
for the District of Utah

Request for Early Termination of Supervision

FILED

DISTRICT COURT

Name of Offender: **Ronald Glen Rampton**

Docket Number: **2:05-cr-00470-02102KW**

Name of Sentencing Judicial Officer: **Honorable David K. Winder**  
**Senior United States District Judge**

DISTRICT OF UTAH

BY: DEPUTY CLERK

Date of Original Sentence: **July 25, 2000**

Original Offense: **Conspiracy to Commit Bank Burglary and Bank Larceny; Bank Burglary and Aiding & Abetting**

Original Sentence: **41 Months BOP Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release** Supervision Began: **October 5, 2004**

**SUPERVISION SUMMARY**

Mr. Rampton passed away on June 3, 2006. The probation office received the death certificate on August 22, 2006, and we are respectfully requesting closure of his case.

If the Court desires more information or another course of action, please contact me at 535-4242.

I declare under penalty of perjury that the foregoing is true and correct.

Theresa Del Casale-Merino

Theresa Del Casale-Merino  
United States Probation Officer  
August 23, 2006

**THE COURT:**

- ☒ Approves the request noted above  
☐ Denies the request noted above  
☐ Other

David K. Winder

Honorable David K. Winder  
Senior United States District Judge

Date: 8/28/06

# UNITED STATES DISTRICT COURT

FILED  
U.S. DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

V.

Braden Ellis Pearson

## JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

BY:

CLERK

Case Number: DUTX205CR000481-001

USM Number: 12722-081

Audrey James

Defendant's Attorney

### THE DEFENDANT:

☒ admitted guilt to violation of condition(s) 1, 2, and 3 of the term of supervision.

☐ was found in violation of condition(s) \_\_\_\_\_ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1	Assaulted a Female	7/3/2006
2	Failed to Submit a Urine Sample	6/14/2006
3	Tested positive for Marijuana	3/31/2006

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has not violated condition(s) 4 and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

Defendant's Residence Address: \_\_\_\_\_

Defendant's Mailing Address: \_\_\_\_\_

8/25/2006

Date of Imposition of Judgment

Signature of Judge

Dale A. Kimball

Name of Judge

U.S. District Judge

Title of Judge

Date

August 28, 2006

DEFENDANT: Braden Ellis Pearson  
CASE NUMBER: DUTX205CR000481-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

4 months.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Braden Ellis Pearson  
CASE NUMBER: DUTX205CR000481-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
30 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Braden Ellis Pearson  
CASE NUMBER: DUTX205CR000481-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall reside at Cornell Community Corrections Center, under a public law placement, for up to 180 days. All leave shall be approved by the U. S. Probation Office.
2. The defendant shall not consume or possess alcohol, nor frequent places where alcohol is the main item of purchase.
3. The defendant shall submit to drug and/or alcohol testing as directed by the U. S. Probation Office, and pay a one-time \$115 fee to partially defray the cost of collection and testing.
4. The defendant shall participate in drug and alcohol abuse treatment under a co-payment plan, as directed by the U. S. Probation Office.
5. The defendant shall participate in a mental health program under a co-payment plan as directed by the U. S. Probation Office, to specifically address domestic violence and/or anger management issues.

# UNITED STATES DISTRICT COURT

Central

District of

Utah

FILED  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

V.

Luis Alberto Escalona-Gomez

JUDGMENT IN A CRIMINAL CASE <sup>2006</sup> AUG 29 A 10:17

Case Number: DUTX 2:05CR000502-001

USM Number: 12779-081

Antonio J. Velez

Defendant's Attorney

DISTRICT OF UTAH

BY: DEPUTY CLERK

## THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC § 1326	Reentry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/16/2006

Date of Imposition of Judgment

*Tena Campbell*

Signature of Judge

Tena Campbell

Name of Judge

District Court Judge

Title of Judge

8-24-2006

Date

DEFENDANT: Luis Alberto Escalona-Gomez  
CASE NUMBER: DUTX 2:05CR000502-001

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

33 Months

☐ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the defendant serve his sentence at FCI Englewood, Colorado facility

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL



DEFENDANT: Luis Alberto Escalona-Gomez  
CASE NUMBER: DUTX 2:05CR000502-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Luis Alberto Escalona-Gomez  
CASE NUMBER: DUTX 2:05CR000502-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not illegally reenter the United States.

DEFENDANT: Luis Alberto Escalona-Gomez  
CASE NUMBER: DUTX 2:05CR000502-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

--	--	--	--

--	--	--	--

--	--	--	--

--	--	--	--

--	--	--	--

--	--	--	--

TOTALS	\$ 0.00	\$ 0.00
--------	---------	---------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Luis Alberto Escalona-Gomez  
CASE NUMBER: DUTX 2:05CR000502-001

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 4 - 10

are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

9

$y$ 

9

United States District Court  
for the District of Utah

**Petition and Order for Action on Conditions of Pretrial Release**

FILED  
U.S. DISTRICT COURT  
2006 AUG 29 A 10: 53  
DISTRICT OF UTAH

Name of Defendant: **Ruby Garcia**

Docket Number: **2:05-CR-00827-001-PGC**

Name of Judicial Officer: **David O. Nuffer, United States Magistrate Judge**

Date of Release: **November 21, 2005**

BY: \_\_\_\_\_  
DEPUTY CLERK

**PETITIONING THE COURT**

☒ To issue a summons

West Valley City, UT 84120

**CAUSE**

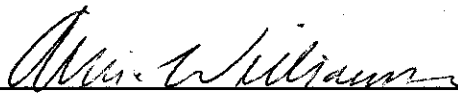
The Pretrial Services officer believes that the defendant has violated the conditions of supervision as follows:

**Allegation No. 1:** The defendant failed to submit for a drug test on July 18, 2006

**Allegation No. 2:** The defendant submitted to a drug test on August 3, 2006, testing positive for methamphetamine

**Allegation No. 3:** The defendant failed to submit for a drug test on August 15, 2006

I declare under penalty of perjury that the foregoing is true and correct



Amie Williamson, United States Pretrial Services Officer  
Date: August 24, 2006

**THE COURT ORDERS:**

- ☒ The issuance of a Summons  
☐ The issuance of a Warrant  
☐ No action  
☐ Other



Honorable David O. Nuffer  
United States Magistrate Judge

Date: 8/28/06



STEVEN B. KILLPACK, Federal Defender (#1808)  
L. CLARK DONALDSON, Assistant Federal Defender (#4822)  
JAMIE ZENGER, Attorney for Defendant (#9420)  
**UTAH FEDERAL DEFENDER OFFICE**  
Attorneys for Defendant  
46 West Broadway, Suite 110  
Salt Lake City, Utah 84101  
Telephone: (801) 524-4010  
Facsimile: (801) 524-4060

---

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

---

UNITED STATES OF AMERICA,  
  
Plaintiff,

v.

EUSEBIO AGUILERA-MEZA,  
  
Defendant.

**ORDER TO WITHDRAW AS COUNSEL**

Case No. 2:05-CR-887 DAK


---

Based on motion of the defendant and good cause shown;

It is hereby ORDERED that L. Clark Donaldson, Assistant Federal Defender, is hereby granted leave to withdraw as counsel of record for Defendant.

Dated this 28th day of August, 2006.

BY THE COURT:



---

HONORABLE DALE A. KIMBALL  
United States District Court Judge

THOM D. ROBERTS (#2773)  
Assistant Attorney General  
MARK L. SHURTLEFF (#4666)  
Attorney General  
Attorneys for Defendants  
160 East 300 South, 5th Floor  
P.O. Box 140857  
Salt Lake City, Utah 84114-0857  
Telephone: (801) 366-0353

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

A. McREYNOLDS,

Plaintiff,

vs.

KENNETH F. WYNN, Director, Utah  
Department of Alcoholic Beverage Control;  
JOHN DOE, Employee, Utah Department of  
Alcoholic Beverage Control; LARRY V.  
LUNT, Chairman; TED D. LEWIS, Vice  
Chairman; NICHOLAS E. HALES,  
Member; FRANK W. BUDD, Member; and  
MARY ANN MANTES, Member, Utah  
Alcoholic Beverage Control Commission,

Defendants.

**AMENDMENT TO MEMORANDUM  
DECISION AND ORDER**

Case No. 2:05-CV-0122

Judge Dale A. Kimball

---

Based upon the Motion and Stipulation of the parties above, and good cause appearing, it  
is hereby

ORDERED, ADJUDGED and DECREED that the Memorandum Decision Order in the above case shall be and is hereby amended to include in its Conclusion, as to Point (2) that:

(2) Defendant Mr. Hansen's Motion for Judgment on the Pleading is granted as to Mr. Hansen, and in addition, Judgment on the Pleadings on the same bases is also granted as to Defendants, Kenneth F. Wynn, Director, Utah Department of Alcoholic Beverage Control; Larry V. Lunt, Chairman; Ted D. Lewis, Vice Chairman; Nicholas E. Hales, Member; Frank W. Budd, Member; and Mary Ann Mantes, Member, Utah Alcoholic Beverage Control Commission.

Dated this 28th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive, flowing style.

---

JUDGE DALE A. KIMBALL

APPROVED AS TO FORM:

/s/ Brian Barnard

Brian Barnard, Attorney for Plaintiff

/s/ William Hanson

William Hanson, Attorney for Defendant  
Hansen (John Doe, Employee)

### CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing AMENDMENT TO MEMORANDUM DECISION AND ORDER was served by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Brian M. Barnard  
James L. Harris, Jr.  
Utah Legal Clinic  
214 East 5<sup>th</sup> South  
Salt Lake City, UT 84111-3204  
[ulcr2d2c3po@utahlegalclinic.com](mailto:ulcr2d2c3po@utahlegalclinic.com)

William Hanson  
Assistant Attorney General  
160 East 300 South, 6<sup>th</sup> Floor  
Salt Lake City, UT 84111  
[bhanson@utah.gov](mailto:bhanson@utah.gov)

/s/ Sherri L. Cornell

FILED  
U.S. DISTRICT COURT

2006 AUG 28 P 5: 25

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

THOM D. ROBERTS (#2773)  
Assistant Attorney General  
MARK L. SHURTLEFF (#4666)  
Attorney General  
Attorneys for Defendants  
160 East 300 South, 5th Floor  
P.O. Box 140857  
Salt Lake City, Utah 84114-0857  
Telephone: (801) 366-0353

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

A. McREYNOLDS,

Plaintiff,

vs.

KENNETH F. WYNN, Director, Utah  
Department of Alcoholic Beverage Control;  
JOHN DOE, Employee, Utah Department of  
Alcoholic Beverage Control; LARRY V.  
LUNT, Chairman; TED D. LEWIS, Vice  
Chairman; NICHOLAS E. HALES,  
Member; FRANK W. BUDD, Member; and  
MARY ANN MANTES, Member, Utah  
Alcoholic Beverage Control Commission,

Defendants.

**AMENDED JUDGMENT IN A CIVIL  
CASE**

Case No. 2:05-CV-0122

Judge Dale A. Kimball

---

This matter having been heard by the Court and a Memorandum Decision and Order  
having been entered, and good cause appearing, it is hereby

ORDERED and ADJUDGED that judgment is entered in favor of each of the Defendants, Kevin Hansen (aka John Doe), Kenneth F. Wynn, Director, Utah Department of Alcoholic Beverage Control; Larry V. Lunt, Chairman; Ted D. Lewis, Vice Chairman; Nicholas E. Hales, Member; Frank W. Budd, Member; and Mary Ann Mantes, Member, Utah Alcoholic Beverage Control Commission, and that Plaintiff's cause of action is dismissed, each party to bear its own costs.

Dated this 28<sup>th</sup> day of August, 2006.

BY THE COURT:

  
JUDGE DALE A. KIMBALL

APPROVED AS TO FORM:

/s/ Brian Barnard  
Brian Barnard, Attorney for Plaintiff

/s/ William Hanson  
William Hanson, Attorney for Defendant  
Hansen (John Doe, Employee)

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing AMENDED JUDGMENT IN THE CIVIL CASE was served by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Brian M. Barnard  
James L. Harris, Jr.  
Utah Legal Clinic  
214 East 5<sup>th</sup> South  
Salt Lake City, UT 84111-3204  
[ulcr2d2c3po@utahlegalclinic.com](mailto:ulcr2d2c3po@utahlegalclinic.com)

William Hanson  
Assistant Attorney General  
160 East 300 South, 6<sup>th</sup> Floor  
Salt Lake City, UT 84111  
[bhanson@utah.gov](mailto:bhanson@utah.gov)

/s/ Sherri L. Cornell

1  
2 IN THE UNITED STATES DISTRICT COURT  
3 IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION  
4

5 CLARE DOLL CHASE,

6 PLAINTIFF,

7 v.

8 CEDAR CITY CORPORATION, ET AL.,

9 DEFENDANTS.

ORDER DENYING  
MOTION FOR LEAVE TO AMEND

CIVIL No. 2:05-CV-00293

THE HONORABLE TENA CAMPBELL

MAGISTRATE BROOKE C. WELLS

10 THIS MATTER having come before the Court for oral argument on August 28, 2006  
11 pursuant to Plaintiff, Clare Doll Chase's, *Motion for Leave of Court to File Amended Complaint*,<sup>1</sup>  
12 the Court having considered the motion, the parties' respective memorandum including  
13 Defendant Southwestern Communications, Inc. ("Southwestern") and Defendant TVS Systems,  
14 Inc.'s ("TVS") opposition thereto, relevant case law, and otherwise being fully informed in the  
15 premises, the Court finds and concludes as follows:

16 FINDINGS OF FACT

- 17 1. Plaintiff filed her initial complaint on or about April 4, 2005.
- 18 2. Plaintiff's original complaint asserted a number of claims against a number of  
19 defendants, including Defendants Southwestern, TVS, Raul Torres, and Ernesto Vargas.
- 20 3. Plaintiff filed her *Motion for Leave of Court to File Amended Complaint* on or  
21 about July 21, 2006, approximately six weeks after Defendants Southwestern and TVS filed their  
22 *Motion for Judgment on the Pleadings*.
- 23 4. In Plaintiff's proposed amended complaint, Plaintiff seeks to specifically aver, for  
24 the first time, that Defendants Southwestern and TVS are liable for the conduct of co-defendants  
25 Raul Torres and Ernesto Vargas under the theory of *respondeat superior*.
- 26

---

27 <sup>1</sup> Docket no. 55.



1           5.       Prior to Plaintiff filing the *Motion for Leave of Court to File Amended Complaint*,  
2 Defendants Southwestern and TVS were unaware that Plaintiff intended to assert liability against  
3 Defendants Southwestern and TVS for the alleged conduct of Raul Torres and Ernesto Vargas.

4           6.       The evidence before the court indicates that Raul Torres and Ernesto Vargas are  
5 unavailable.

6           7.       Plaintiff has been trying to locate, for purposes of service of process Torres and  
7 Vargas for the past three years.

8           8.       The Court finds that the allegations that Plaintiff seeks leave to add to her  
9 complaint are based on information that she had available to her at the time that she filed her  
10 initial complaint on or about April 4, 2005.

11          9.       Based on the evidence before the court, the court finds that Plaintiff had the  
12 information available to her on or about May 7, 2002, when the events giving rise to Plaintiff's  
13 claims allegedly occurred.

14          10.      The Court finds that there has been undue delay between the filing of the initial  
15 complaint and the *Motion for Leave of Court to File Amended Complaint*.

16          11.      The Court finds no basis to justify the undue delay on grounds of "excusable  
17 neglect" or on any other grounds.

18          12.      The Court finds that the *Motion for Leave of Court to File Amended Complaint*  
19 can be construed as a response to the *Motion for Judgment on the Pleadings*<sup>2</sup> filed by Defendants  
20 Southwestern and TVS inasmuch as the *Motion for Leave of Court to File Amended Complaint*  
21 was filed close in time following the *Motion for Judgment on the Pleadings*.

22          13.      The Court finds that granting the *Motion for Leave of Court to File Amended*  
23 *Complaint* would unduly prejudice Defendants Southwestern and TVS because, among other  
24 things, Plaintiff seeks to add to her complaint allegations that Defendants Southwestern and TVS  
25

---

26                   <sup>2</sup> Docket no. 38.

1 are liable for the conduct of co-defendants Raul Torres and Ernesto Vargas even though Plaintiff  
2 has been unsuccessful in locating, or serving process upon, Torres and Vargas for the past three  
3 years. Thus, permitting Plaintiff to predicate her claim against Defendants Southwestern and  
4 TVS for the conduct of Torres and Vargas, who are unavailable and upon which Defendants  
5 would be unable to conduct any discovery, would unfairly prejudice said defendants.

#### 6 CONCLUSIONS OF LAW

7 14. The allegations that Plaintiff seeks leave to add to her complaint, including the  
8 claims based on *respondeat superior*, are based on information that was within the purview of  
9 what her counsel should have learned pursuant to a reasonable inquiry into the underlying facts of  
10 the case prior to, or shortly after, filing her original complaint.

11 15. There is nothing before the court that constitutes excusable neglect in explaining  
12 Plaintiff's undue delay in seeking leave to amend.

13 16. Granting the *Motion for Leave of Court to File Amended Complaint* would unduly  
14 prejudice Defendants Southwestern and TVS for the reasons explained herein.

15 17. The facts and circumstances of this matter are similar to Federal Ins. Co. v. Gates  
16 Learjet Corp., 823 F.2d 383 (10th Cir. 1987), in that in Gates Learjet the Tenth Circuit upheld  
17 denial of a motion for leave to amend because, among other things, the moving party had  
18 knowledge of the predicate facts years before seeking leave to amend.

19 //

20 //

21 //

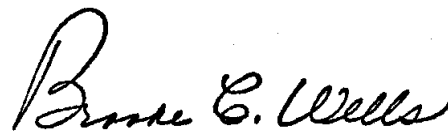
22 //

23  
24 18. For each of the aforesaid reasons and as otherwise stated in court and on the  
25 record, the *Motion for Leave of Court to File Amended Complaint* is denied.

#### 26 ORDER

1 Based on the foregoing, the Court hereby DENIES Plaintiff's *Motion for Leave of Court to*  
2 *File Amended Complaint.*

3  
4  
5  
6 DATED this 29th day of August, 2006.

7  
8  
9  
10 

11 

---

Brooke C. Wells  
12 United States Magistrate Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

---

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

DAVID K. BROADBENT, as Receiver, for  
MERRILL SCOTT & ASSOCIATES, LTD.,  
et. al.,

Plaintiff,

vs.

THOMAS SHELTON POWERS, M.D.,  
JONEZEN ENTERPIZE, INC., a Nevada  
business entity, THE UNITED STATES OF  
AMERICA, ASSOCIATED TITLE  
INSURANCE AGENCY, and DOES 1-20,

Defendants.

ORDER

Civil No. 2:05 CV 375

---

Before the court is Thomas Shelton Powers, M.D.'s Motion for Leave (dkt. #35). Dr. Powers filed this motion to request that the court consider his response to the Motion for Order Requiring Defendant Powers to Pay Rent and Motion for Contempt Against Thomas Shelton Powers, M.D. (dkt. #24), which was filed by the Receiver on December 5, 2005. No party objected to the court's consideration of Dr. Powers's responsive memorandum.

The court denied the Receiver's motion on May 19, 2006. Considering that the Receiver's motion has been denied, Dr. Powers's Motion for Leave (dkt. #35) is now moot and the court therefore DENIES that motion as moot.

SO ORDERED this 29th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge

---

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

DAVID K. BROADBENT, as Receiver, for  
MERRILL SCOTT & ASSOCIATES, LTD.,  
et. al.,

Plaintiff,

vs.

THOMAS SHELTON POWERS, M.D.,  
JONEZEN ENTERPIZE, INC., a Nevada  
business entity, THE UNITED STATES OF  
AMERICA, ASSOCIATED TITLE  
INSURANCE AGENCY, and DOES 1-20,

Defendants.

ORDER & MEMORANDUM DECISION

Civil No. 2:05 CV 375

---

This case is a small piece of a larger puzzle involving Merrill Scott & Associates, Ltd. In the ongoing case of SEC v. Merrill Scott & Assocs., Ltd., 2:02 CV 39 (D. Utah), the Securities and Exchange Commission has raised allegations of fraud in connection with a massive Ponzi scheme allegedly orchestrated by Merrill Scott<sup>1</sup> principals. The court appointed a Receiver, who was charged with the task of marshaling and taking control over all of Merrill Scott's funds, assets, and property. (See id., Stipulated Order Appointing Receiver (dkt. #15).)

The present litigation was filed to resolve a dispute over the ownership of a home in Salt Lake City, Utah. The Receiver claims that the residence is a Merrill Scott asset and should be

---

<sup>1</sup>While the SEC names several entities and individuals as defendants in Merrill Scott & Assocs., 2:02 CV 39 (D. Utah), for the sake of convenience, the court refers to all defendants collectively as "Merrill Scott."

included in the receivership estate. But Thomas Shelton Powers, M.D., claims that he is the rightful owner of the property. Additionally, Jonezen Enterprize, Inc. claims that it has a valid encumbrance on the title that must be satisfied in full.

The court held a hearing in this matter on May 19, 2006. At the close of the hearing, the court denied a motion from the Receiver requesting that Dr. Powers be required to pay rent and for an order of contempt against Dr. Powers. (See Order Re: May 19, 2006 Hearing (dkt. #57).) The court noted that the Receiver's request for an order of contempt was denied without prejudice. (See id.) The court also indicated in its order that it would take a summary judgment motion filed by Jonezen under advisement. The court now denies that summary judgment motion.<sup>2</sup>

### **Standard Applicable to Summary Judgment Motions**

Federal Rule of Civil Procedure 56 permits the entry of summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986); Adler v. Wal-Mart Stores, Inc., 144 F.3d 664, 670 (10th Cir. 1998). The court must “examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment.” Applied Genetics Int’l, Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1241 (10th Cir. 1990). “The

---

<sup>2</sup>Jonezen styled its motion as a “cross-motion” for summary judgment. This characterization of its motion was based on its determination that the Receiver’s motion for an order requiring the payment of rents and for contempt against Dr. Powers, was, in actuality, a motion for summary judgment on the merits of the parties’ dispute. The Receiver opposed that characterization of its motion.

mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient [to overcome a motion for summary judgment]; there must be evidence on which the jury could reasonably find for the plaintiff." Liberty Lobby, 477 U.S. at 252; see also Anderson v. Coors Brewing Co., 181 F.3d 1171, 1175 (10th Cir. 1999) ("A mere scintilla of evidence supporting the nonmoving party's theory does not create a genuine issue of material fact.").

"Summary judgment is a drastic remedy [and] and any relief pursuant to Fed. R. Civ. P. 56 should be awarded with care." Conaway v. Smith, 853 F.2d 789, 792 n.4 (10th Cir. 1988) (citing Jones v. Nelson, 484 F.2d 1165, 1168 (10th Cir. 1973)). "Unless the moving party can demonstrate his entitlement beyond a reasonable doubt, summary judgment must be denied." Id. (citing Norton v. Liddel, 620 F.2d 1375, 1381 (10th Cir. 1980)).

### **Analysis**

According to Jonezen, it was unwittingly dragged into the legal quagmire surrounding the Merrill Scott receivership when it granted a loan to Dr. Powers. Jonezen loaned Dr. Powers more than \$100,000.00 in exchange for a Trust Deed on a residence located in Salt Lake City, Utah. Before granting Jonezen the Trust Deed, Dr. Powers had transferred the title to the residence from an entity called Mira Vista, LLC to himself. The Receiver argues that Mira Vista is a Merrill Scott entity and that Dr. Powers did not have the authority to transfer the title of the residence. Accordingly, the Receiver contends that Jonezen does not have a valid encumbrance on the property because Dr. Powers was not authorized to encumber the property.

Jonezen claims that its Trust Deed is valid and enforceable. In fact, Jonezen argues that is entitled to summary judgment on that point. According to Jonezen, it makes no difference whether the purported transfer of the residence from Mira Vista to Dr. Powers was valid because



Jonezen is a bona fide encumbrancer for value. Alternatively, Jonezen states that even if it does not qualify as a bona fide purchaser, Dr. Powers was authorized to transfer the title from Mira Vista to himself and, therefore, there is no defect in Jonezen's Trust Deed.

#### Bona Fide Purchaser

Jonezen claims that it is entitled to summary judgment because it is a bona fide purchaser protected under Utah's recording statute. Utah Code section 57-3-103 provides purchasers with protection against unrecorded interests in property if the purchaser gives value and completes the purchase in good faith. See Utah Code Ann. § 57-3-103. Utah's recording statute is applicable to beneficial interests created under trust deeds. See Bybee v. Stuart, 189 P.2d 118, 123 (Utah 1948) (interpreting bona fide purchaser provision to include beneficial interests under trust deeds); South Sanpitch Co. v. Pack, 765 P.2d 1279, 1281-82 (Utah Ct. App. 1988) (holding that bona fide purchaser provision within recording statute was applicable to beneficial interest under trust deed).

In this case, Jonezen argues that it was presented with a deed listing Dr. Powers as the record owner of the property and that it received no notice that the residence might be subject to a court order freezing Merrill Scott assets. In fact, Jonezen asserts that at the time it granted Dr. Powers the loan, there was no indication at all that the Receiver claimed an interest in the residence. As a result, Jonezen contends that Utah law shields it from any interest in the property claimed by the Receiver.

The Receiver responds that he was not required to record any notice of his interest in the property and that, since the bona fide purchaser statute is designed to protect people from unrecorded interests in property, that statute is not applicable in this case. The Receiver claims

that Jonezen made a loan on a “wild deed,” which is outside of the protections afforded by the recording statute. The Receiver’s reliance on the precedent involving wild deeds is misplaced.

Wild deeds are deeds that are executed by a stranger to the title, which should theoretically put the purchaser on inquiry notice that a title defect is a distinct possibility. See Salt Lake County v. Metro West Ready Mix, 2004 UT 23, ¶ 14, 16, 89 P.3d 155 (“We agree that the Tingeys’ lack of record title put Metro West on notice of a defect in the Tingeys’ title. . . . Because the Tingeys had no record title to the Property when they transferred it to Metro West, the conveyance was carried out through what is commonly referred to as a ‘wild deed.’”); see also 11 Thompson on Real Property, Thomas Edition, § 92.11(c) (David A. Thomas ed., 1994) (“[A] ‘wild deed’ [is one] executed by a grantor with no record ownership of the interest . . .”). Although the parties debate whether Dr. Powers had the legal authority to transfer the title of the property to himself, his name was listed on a recorded deed. Accordingly, the deed upon which Jonezen relied cannot properly be considered a wild deed.

Regardless, Jonezen’s argument is unavailing. If the Receiver is correct that Dr. Powers had no authority to make the transfer in question, the deed upon which Jonezen relied was void. The protections afforded to bona fide purchasers do not apply to deeds that are void. See First Interstate Bank v. First Wyoming Bank, 762 P.2d 379, 382 (Wyo. 1988) (“A bona fide purchaser is protected against infirmities in a deed which would render the deed voidable. 23 Am. Jur.2d Deeds § 188 (1983). . . . While a void deed cannot pass title even in favor of an innocent purchaser or a bona fide encumbrancer for value.”) (further citation omitted).

The distinction between void and voidable deeds arises only if the grantee has retransferred the land to a bona fide purchaser for value. If the defect is regarded as making the deed void, even a BFP will have no title, but if the deed is merely voidable the title will be unassailable in the hands of a BFP.

The Law of Property, Roger A. Cunningham, et. al. 720 (West 1984).

Here, the trust deed granted by Dr. Powers is the type considered “void.” See Messenger v. Sundell-Guy, 1999 WL1253057 (D. Kan., Dec. 1, 1999) (“Moreover, if the purchaser has no interest in the property, because of the invalidity of the deed, a subsequent purchaser from him or her is not entitled to protection as a bona fide purchaser. Legal interests of the vendor are protected as against the person claiming through the purchaser, under the general rule that a vendor can, as against persons having a superior legal interest, convey only such interest as he or she has.” (quoting 77 Am.Jur.2d Vendor and Purchaser § 417)).

#### Dr. Powers’s Authority to Transfer the Title

Jonezen’s alternative argument is that Dr. Powers held valid title to the property at the time he granted Jonezen the Trust Deed. The parties plainly dispute the authority of Dr. Powers to transfer the title from Mira Vista to himself. But no party has clearly indicated the undisputed facts that support the respective legal conclusions that they advocate.

The core of Jonezen’s argument is that Dr. Powers’s financial interest in Mira Vista was so substantial that he was authorized to take actions on behalf of the corporation. This theory is premised on Dr. Powers’s assertion of “economic membership” in Mira Vista flowing from his capital contributions to that entity. The factual record on this point is, to put it mildly, in considerable disarray. The parties’ disagreement can perhaps best be summarized by stating that the Receiver contends that Dr. Powers is not entitled to the benefit of his contributions because his funds were mingled with other Merrill Scott funds before flowing to Mira Vista. Dr. Powers and Jonezen seemingly assert that (1) Mira Vista’s assets can be traced back to Dr. Powers; (2) Dr. Powers is therefore properly considered the “owner” of Mira Vista; and (3) because Dr.

Powers was the owner of Mira Vista, he was empowered to transfer the title of the Salt Lake City residence from Mira Vista to himself.

Given the uncertain state of the factual record, summary judgment in favor of Jonezen is unwarranted. The Receiver's allegation that any contributions to Mira Vista provided by Dr. Powers are not fairly traceable to Dr. Powers by virtue of the commingling of those funds with other Merrill Scott assets presents a disputed material fact. Accordingly, Jonezen Enterprize's Cross-Motion for Summary Judgment is DENIED.

SO ORDERED this 29th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge

David R. Goodnight (WSBA No. 20286)  
John H. Ridge (WSBA No. 31885)  
Loren G. Armstrong (WSBA No. 33068)  
STOEL RIVES LLP  
600 University Street, Suite 3600  
Seattle, WA 98101  
Telephone: (206) 624-0900  
Facsimile: (206) 386-7500

Gregory B. Monson (USB No. 02294)  
STOEL RIVES LLP  
201 S Main Street, Suite 1100  
Salt Lake City, UT 84111  
Telephone: (801) 328-3131  
Facsimile: (801) 578-6999

Attorneys for Plaintiff Qwest Corporation

FILED  
U.S. DISTRICT COURT  
2006 AUG 29 A 9:47  
DISTRICT OF UTAH  
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

QWEST CORPORATION,

Plaintiff,

v.

UTAH TELECOMMUNICATIONS OPEN  
INFRASTRUCTURE AGENCY, an interlocal  
cooperative governmental agency; the CITY  
OF RIVERTON, a Utah municipal  
corporation; and TETRA TECH  
CONSTRUCTION SERVICES INC., a  
Colorado Corporation,

Defendants.

Case No. 2:05CV00471 PGC  
The Honorable Paul G. Cassell

**AGREED ORDER DISMISSING WITH  
PREJUDICE QWEST'S CLAIMS NO. 4, 5,  
6, 7, AND 8 AND ALL OF UTOPIA'S  
COUNTERCLAIMS**

**AGREED ORDER**

Pursuant to the terms of the SETTLEMENT AGREEMENT BY AND BETWEEN THE UTAH  
TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY, TETRA TECH CONSTRUCTION SERVICES  
INC., AND QWEST CORPORATION, dated August 9, 2006, and attached hereto as Exhibit A:

1. Qwest Corporation's Fourth (Violation of State and Local Laws – Industry and

Safety Standards), Fifth (Trespass and Conversion), Sixth (Trespass to Chattels), Seventh (Negligence), and Eighth (42 U.S.C. § 1983) claims for relief, as stated in Qwest's Amended Second Amended Complaint (Docket No. 44) are dismissed *with prejudice*.

2. All of UTOPIA's counterclaims, including the First, Second, Third, Fourth, Sixth, and Seventh Counterclaims for Relief, as stated in UTOPIA's Answer to Amended Second Amended Complaint and Counterclaim (Docket No. 47) and its supplemental discovery responses, are dismissed *with prejudice*.

3. The above claims being dismissed *with prejudice* include claims that were previously dismissed *without prejudice* by the Court in its Order Granting Motion to Dismiss UTOPIA's Counterclaims and Denying Motion for Partial Summary Judgment dated July 18, 2006. Those claims previously dismissed *without prejudice* by the Court in its July 18, 2006 Order are hereby now dismissed *with prejudice*.

4. Prior to the filing of Qwest's Amended Second Amended Complaint (Docket No. 44), Qwest and UTOPIA had entered into a stipulation, approved by the Court (Docket No. 43), whereby Qwest dismissed *without prejudice* that portion of Qwest's original negligence claim stated in its original complaint (Docket No. 1) against UTOPIA arising out of the alleged cutting of Qwest's telecommunications cables and service wires during the construction and/or operation of UTOPIA telecommunications network. That portion of Qwest's negligence claim covered by the stipulation (Docket No. 43) remains dismissed *without prejudice*.

5. The above dismissals will be without an award of attorneys' fees or costs to any party.

6. This Court shall retain jurisdiction to enforce the Settlement Agreement and Release between Qwest and Defendants incorporated within this Order of Dismissal.

Dated this 28th day of August, 2006.



THE HONORABLE PAUL G. CASSELL

Presented by:

/s/ Loren G. Armstrong

David R. Goodnight (WSBA No. 20286)  
John H. Ridge (WSBA No. 31885)  
Loren G. Armstrong (WSBA No. 33068)  
STOEL RIVES LLP  
600 University Street, Suite 3600  
Seattle, WA 98101  
Telephone: (206) 624-0900

Gregory B. Monson (USB No. 02294)  
STOEL RIVES LLP  
201 S Main Street, Suite 1100  
Salt Lake City, UT 84111  
Telephone: (801) 328-3131

Attorneys for Plaintiff Qwest Corporation

/s/ L. Armstrong per email auth. of 8/25/06

Steven W. Allred (USB No. 0060)  
Attorney at Law  
1007 North Bonneville Drive  
Salt Lake City, UT 84103  
Telephone: (801) 550-9611

Attorney for Defendant UTOPIA

/s/ L. Armstrong per email auth. of 8/23/06

David C. Richards (USB No. 6023)  
Karra J. Porter (USB No. 5223)  
Christensen & Jensen, P.C.  
50 South Main St., Suite 1500  
Salt Lake City, Utah 84144

Attorneys for Defendant Tetra Tech  
Construction Services, Inc.

**SETTLEMENT AGREEMENT BY AND BETWEEN  
THE UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY, TETRA  
TECH CONSTRUCTION SERVICES INC., AND QWEST CORPORATION**

THIS SETTLEMENT AGREEMENT ("Agreement") is effective as of August 8, 2006<sup>a</sup> (the "Effective Date") between the Utah Telecommunication Open Infrastructure Agency ("UTOPIA"), Tetra Tech Construction Services, Inc., ("Tetra Tech"), and Qwest Corporation ("Qwest"), together the "Parties."

**I. RECITALS**

A. There is presently pending in the U.S. District Court for the District of Utah a lawsuit entitled *Qwest Corporation v. the Utah Telecommunication Open Infrastructure Agency; the City of Riverton; and Tetra Tech Construction Services Inc.* (No. 2:05CV00471 PGC) (the "Lawsuit").

B. The Parties desire to settle all disputes between, among, or involving them arising out of or related to the tort claims that have been asserted in the Lawsuit, including specifically Qwest's claims for relief Nos. 5, 6, and 7 and UTOPIA's counterclaim No. 6 (collectively, the "Tort Claims Subject to Mediation").

NOW, THEREFORE, in consideration of the mutual promises, obligations and releases set forth below, the Parties agree as follows:

**II. TERMS AND CONDITIONS OF SETTLEMENT**

1. Record Verification Process. UTOPIA and Qwest will jointly conduct a review of all UTOPIA facility records and Qwest's pole ownership records within 45 business days of the signing of this Agreement. Each party will bear its own costs for this portion of the process.
2. Records Reconciliation Process. If during the Record Verification process, UTOPIA and Qwest are unable to resolve ownership disputes as between Qwest and any other entity claiming pole ownership, Qwest will bear the costs of a Records Reconciliation Process with the other alleged owner to make a final, good faith determination of pole ownership, to be completed within 45 business days of the finalization of the Record Verification Process.
3. Pole Application. For poles determined to be owned by Qwest (either through the Records Verification Process or Records Reconciliation Process) to which UTOPIA has attached without permission from Qwest, UTOPIA will then submit a Pole Application for such poles, in accordance with the terms of the Pole Attachment Agreement of March 28, 2006, including the payment of the standard application fee of \$668.86 / route. A route will be defined as the number of poles in a linear mile or 25 poles, whichever is greater.



a. Identification of Make Ready Work on Qwest Poles. Based on these Pole Applications, Qwest will identify any make ready work necessary on poles owned by Qwest related to UTOPIA's facilities, pursuant to Utah PSC rules and the Pole Attachment Agreement between UTOPIA and Qwest, limited to mid-span interference, separation, cross drilling of poles, down guys, lowest attachment and protruding bolts. The Parties agree that any lowest attachment issues shall be considered make ready work under this Agreement.

b. Identification of Remedial Work on Qwest Poles. Based on these Pole Applications, Qwest will identify any remedial work necessary on poles owned by Qwest related to UTOPIA's facilities, pursuant to the NESC, limited to mid-span interference, separation, cross drilling of poles, down guys, and protruding bolts.

c. Performance of Make Ready or Remedial Work. Any make ready work or remedial work identified above, other than Qwest cable splicing and other work that Qwest must do under applicable standards, necessary on Qwest-owned poles will be performed by UTOPIA/Tetra Tech, at UTOPIA/Tetra Tech's expense or, if UTOPIA/Tetra Tech prefer, by Qwest or a Qwest-approved contractor, at UTOPIA/Tetra Tech's expense, with such expenses to be billed to UTOPIA/Tetra Tech on a monthly basis. Within 10 days after the signing of this Agreement Qwest will provide to UTOPIA/Tetra Tech a list of Qwest-approved contractors.

d. If UTOPIA/Tetra Tech elects to perform the Make Ready Work or Remedial Work UTOPIA/Tetra Tech will pay \$29.29 / half hour for Qwest to conduct a post-inspection to ensure the necessary work was adequately performed consistent with this Agreement.

4. Interference with Qwest Facilities on Poles not Owned By Qwest. On poles not owned by Qwest to which UTOPIA has attached its facilities, Qwest will within 12 months after the completion of the Records Reconciliation Process, identify any and all alleged trespasses and damages to its facilities by physical address and Qwest pole number, along with a description of the damage and the correction that needs to be made, limited to mid-span interference, separation, cross drilling of poles, down guys, and protruding bolts in violation of NESC and pole owner standards. Tetra Tech agrees to repair any such violations within 60 days of such identification. Such repairs may be made by Tetra Tech, at Tetra Tech's expense, subject to a post-inspection or, if Tetra Tech prefer, by Qwest or a Qwest-approved contractor, at Tetra Tech's expense, with such expenses to be billed to Tetra Tech on a monthly basis, for that remedial work not otherwise inspected by a pole owner.

5. Repair of Alleged Improper Attachments with Qwest Facilities. Tetra Tech agrees to repair the improper attachments on the poles identified on the list attached as Exhibit A within 60 days according to the NESC. Tetra Tech will pay \$29.29 / half hour for Qwest to conduct a post-inspection to ensure the necessary work was adequately performed.

6. Designees. The Parties agree to cooperate in good faith to resolve all disputes that may arise under this Settlement Agreement. Qwest designates Don Green as its representative. UTOPIA

designates Scott Carlile as its representative. Tetra Tech designates Joe Santoso as its representative. Any party may designate an equivalent representative upon notice to the other parties.

7. Reciprocal Repair Obligation. If at any time during the processes identified in 1 – 5 above, the Parties become aware of Qwest attachments that violate the standards in the Pole Attachment Agreement, Qwest shall repair its facilities at its own expense within 60 days of notice. Any disputes will be subject to the dispute procedures of this Agreement.

8. Dispute Resolution. Other than the issue of lowest attachment on Qwest owned poles, in the event that the parties are unable to resolve any dispute that arises under this Agreement, the Parties agree to submit such disputes to the above-listed designees or their equivalents. In the event that the dispute is not resolved by the designees or their equivalents, the parties agree to submit the dispute to Jim Thomas, Roger Black, and Ron Seitz or their equivalents. If no resolution is reached, a binding decision to be made by a special master, to be agreed upon by the parties, if necessary. All parties reserve the right to bring disputes over lowest attachment on Qwest owned poles to the Utah PSC. By agreeing to such, UTOPIA does not agree that the Utah PSC has jurisdiction over it for any other purpose. Pending a decision on the lowest attachment issue by the Utah PSC, Qwest agrees that it will not file trespass claims against UTOPIA or Tetra Tech based on lowest attachment issues.

9. Mutual Release. The Parties hereby release, acquit, and forever discharge each other and their respective past, present, and future principals, officers, directors, employees, and their respective successors in interest, insurers and attorneys from: any and all actions including but not limited to, causes of action, all tort claims or demands for damages, attorneys' fees, costs, loss of profit, expenses, compensation, consequential damages or any other thing whatsoever, known or unknown, based on, arising out of, resulting from, or in any way related to the Claims Subject to Mediation. Within ten (10) days from the date of this Agreement, the Parties shall submit a Stipulation and Agreed Order dismissing all Claims against Tetra Tech and the remaining tort Claims against UTOPIA with prejudice. The Parties agree that those claims dismissed by Judge Cassell in the Court's July 18, 2006 order, shall be considered dismissed with prejudice.

10. Dismissal of Malicious Interference Claim. UTOPIA shall dismiss, with prejudice, those parts of its Sixth Claim for relief insofar as such claim seeks relief from the facts alleged in UTOPIA's supplemental Response to Interrogatory No. 20 under the heading "Legislation and Municipal Interference." UTOPIA specifically reserves that part of the Sixth Claim under the heading "Pole Attachment" denial and "Pole Avoidance Work" provided, however, if Qwest (in writing) agrees to dismiss its remaining claims for attorneys' fees pursuant to Section 1983 and 1988 with prejudice prior to August 16, 2006 at 5:00 p.m. M.D.T., UTOPIA agrees to dismiss its malicious interference claim with prejudice, its Sixth Claim in its entirety. In that event, the parties shall include these claims in the Stipulation and Agreed Order.

11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. Either Party may file this Agreement with the Utah PSC, without any Party's waiver of the right to challenge the PSC's jurisdiction.

12. Entire Agreement, Amendment. This Agreement contains the entire agreement between the parties with regard to the matters herein set forth and supersedes all prior and contemporaneous negotiations, commitments and agreements with respect to its subject matter. This Agreement may be amended or modified only by an agreement in writing executed in the same manner as set forth in this Agreement.

13. Attorneys' Fees and Costs. Each Party shall bear its own attorneys' fees and costs.

14. This Agreement shall inure to the benefit of and be binding upon the heirs, successors, and assigns of the Parties.

15. This Agreement is entered into as a compromise of a disputed claim. Nothing contained herein shall be construed as an admission of liability by any Party, as any such alleged liability is specifically denied.

<p>The Utah Telecommunication Open Infrastructure Agency</p> <p>By: <u>[Signature]</u> DAVID A. J. SHAW</p> <p>Its: <u>ACTING EXECUTIVE DIRECTOR AND GENERAL COUNSEL</u></p> <p>And Approved as to form:</p> <p>By: <u>[Signature]</u> STEVEN ALLRED</p> <p>Its: <u>OUTSIDE COUNSEL</u></p>	<p>Tetra Tech Construction Services Inc</p> <p>By: <u>[Signature]</u> RONALD L. SEITE</p> <p>Its: <u>VICE PRESIDENT - TTCSE</u></p>
<p>Qwest Corporation:</p> <p>By: <u>[Signature]</u> Thomas W. Snyder</p> <p>Its: <u>Corporate Counsel</u></p>	

Witnessed:

By:

  
Magistrate Judge Nuffer

---

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

DAVID K. BROADBENT, as Receiver, for  
MERRILL SCOTT & ASSOCIATES, LTD.,  
et. al.,

Plaintiff,

vs.

THOMAS SHELTON POWERS, M.D., an  
individual,

Defendant.

ORDER

Civil No. 2:05 CV 539

---

Before the court is Thomas Shelton Powers, M.D.'s Motion for Leave (dkt. #11). Dr. Powers filed this motion to request that the court consider his response to the Motion for Order Requiring Defendant Powers to Pay Rent and Motion for Contempt Against Thomas Shelton Powers, M.D. (dkt. #4), which was filed by the Receiver on December 5, 2005. No party objected to the court's consideration of Dr. Powers's responsive memorandum.

The court denied the Receiver's motion on May 19, 2006, citing the parties' stipulation regarding the treatment of rent money. Considering that the Receiver's motion has been denied, Dr. Powers's Motion for Leave (dkt. #11) is now moot and the court therefore DENIES that motion as moot.

SO ORDERED this 29th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge

United States District Court  
for the District of Utah

## Petition and Order for Action on Conditions of Pretrial Release

Name of Defendant: **David Clark**Docket Number: **2:06-CR-00034-001-DS**Name of Judicial Officer: **David O. Nuffer**Date of Release: **February 22, 2006**FILED  
U.S. DISTRICT COURT

DISTRICT OF UTAH

BY: DEPUTY CLERK

## PETITIONING THE COURT

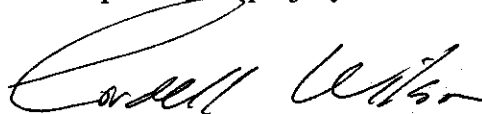
☒ To issue a summons      1050 East 500 South, #3  
St. George, UT 84770

## CAUSE


The pretrial services officer believes that the defendant has violated the conditions of supervision as follows:

**Allegation No. 1:** On July 5, 2006 and July 27, 2006, the defendant submitted urine samples which tested positive for the presence of methamphetamine.

I declare under penalty of perjury that the foregoing is true and correct

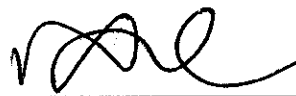


Cordell Wilson, U.S. Pretrial Services Officer

Date: August 22, 2006 

## THE COURT ORDERS:

- ☒ The issuance of a Summons  
☐ The issuance of a Warrant  
☐ No action  
☐ Other

Honorable David O. Nuffer  
United States Magistrate JudgeDate: 8/25/06

RICHARD P. MAURO (5402)  
Lawyer for Defendant  
43 East 400 South  
Salt Lake City, Utah 84111  
Telephone: (801) 363-9500

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

---

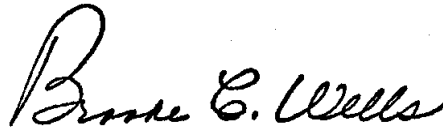
UNITED STATES OF AMERICA,	:	
Plaintiff,	:	ORDER MODIFYING CONDITIONS OF PRE-TRIAL RELEASE
vs.	:	Case No. 2:06CR37
AMBER YOUNG,	:	
Defendant.	:	Judge Tena Campbell Magistrate Judge David O. Nuffer

---

Based upon the motion of the defendant, Amber Young, through her lawyer, Richard P. Mauro, stipulation of probation officer, Jerry Hawks and good cause appearing, it is hereby

ORDERED that Ms. Young's ankle monitor be removed. The remaining conditions of her pre-trial release remain in place.

DATED this 29th day of August, 2006.



---

Magistrate Judge Brooke C. Wells  
United States District Court



CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Brett Parkinson  
Assistant United States Attorney  
185 South State Street, Suite 400  
Salt Lake City, Utah 84111

/s/ Heather Stokes

---

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT  
2006 AUG 28 P 12: 07  
DISTRICT OF UTAH

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEVEN J. GIBBS,

Defendant.

Case No. 2:06-CR-00239-DAK

SCHEDULING ORDER

Magistrate Judge Samuel Alba

---

The above-captioned action came on for a status conference this 21<sup>st</sup> day of August, 2006. The defendant was represented by Mark Moffat and Craig Carman. The United States was represented by Assistant United States Attorney Mark Y. Hirata. The defendant was also present.

AUSA Hirata advised the Court that the parties were engaged in on-going plea bargaining discussions and were close to reaching an agreement. AUSA Hirata also advised that in the event such plea negotiations fell through, a one-week trial setting was necessary. Mr. Moffat concurred with the government's representations and the need for a trial setting. Finally, AUSA Hirata advised the Court that although the Court had made prior Speedy Trial findings in connection with the defendant's initial appearance on June 6, 2006 and the prior status conference on July 12, 2006, the government had not followed up with proposed orders as requested by the Court. In light of these circumstances, AUSA Hirata requested the Court make Speedy Trial findings which covered the entire period of time since the initial appearance on June 6. Mr. Moffat had no objections to this request. The Court made such findings.

Based on the statements of counsel, the Court made the following findings of fact:

1. This case involves a large volume of discovery, is complex as to the legal issues for resolution, and a trial setting beyond the 70 days from the date of the defendant's initial appearance is necessary to afford the defendant's counsel adequate time to prepare for all pretrial and trial matters.
2. The parties are currently engaged in plea negotiations and a trial setting beyond the 70 days from the date of the defendant's initial appearance is necessary to allow such plea negotiations to continue to completion towards an anticipated plea.
3. The ends of justice served by granting a trial continuance outweigh the best interest of the public and the defendant in a speedy trial.

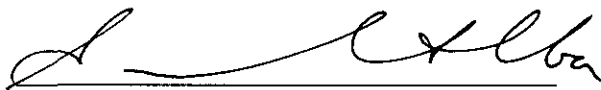
Based on the foregoing findings of fact, and good cause appearing,

**IT IS ORDERED that:**

1. A five-day trial is set for October 30, 2006, beginning at 8:30 a.m.
2. The parties shall submit any proposed voir dire questions and jury instructions to the Court by October 27, 2006.
3. The parties shall complete plea negotiations and notify the Court of a plea agreement by October 10, 2006.
4. The time period between June 6, 2006 and October 30, 2006 is excluded under 18 U.S.C. §§ 3161(h)(1)(I), (h)(8)(A), and (h)(8)(B)(ii) from the time within which trial of this case must commence under the Speedy Trial Act.

DATED this 28<sup>th</sup> day of August, 2006.

BY THE COURT:



The Honorable Samuel Alba  
United States Magistrate Judge

---

**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF UTAH, CENTRAL DIVISION**

---

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**MILENKO STJEPANOVIC,**

**Defendant.**

**ORDER GRANTING MOTION TO  
WITHDRAW AS COUNSEL**

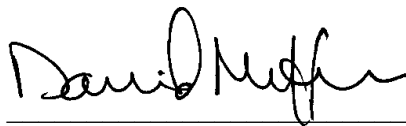
**Case No. 2:06 CR 348 TS**

This matter has been reviewed by the Court on a Motion to Withdraw as Counsel filed by Viviana Ramirez, Assistant Federal Defender; the Court being fully advised and good cause appearing, IT IS HEREBY ORDERED:

Viviana Ramirez, Assistant Federal Defender, is hereby granted leave to withdraw as counsel of record for Defendant.

Dated this 28th day of August, 2006.

BY THE COURT:



---

David Nuffer  
United States Magistrate Judge

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

**QUALITY WHOLESALE HOMES AND  
FURNISHINGS, INC., fka QUALITY  
WHOLESALES HOMES, INC., a  
Nevada corporation,**

**Plaintiff,**

**vs.**

**DAVID EDWARDS, aka DAVID  
CAVALIERI, aka DAVID ZUMSTEG,  
an individual; WHOLESALE  
MANUFACTURED HOMES DIRECT, a  
California dba; FACTORY DIRECT  
HOUSING, INC., a California  
corporation; CAMBEROS-SYSTEMS, a  
California dba; and JOHN DOES 1-10,**

**Defendants.**

**ORDER**

**Case No. 2:06-cv-00092-TS-PMW**

**Judge Ted Stewart**

**Magistrate Judge Paul M. Warner**

---

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Ted Stewart pursuant to 28 U.S.C. § 636(b)(1)(A). Before the court is Plaintiff's motion for leave to amend its complaint.<sup>1</sup>

Pursuant to rule 15(a) of the Federal Rules of Civil Procedure, leave to amend pleadings "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (stating that the mandate of rule 15(a) "is to be heeded" and that "[i]n

---

<sup>1</sup> Docket no. 33.

the absence of any apparent or declared reason . . . the leave sought should, as the rules require, be ‘freely given.’” (quoting Fed. R. Civ. P. 15(a)). Accordingly, Plaintiff’s motion for leave to amend its complaint is GRANTED. However, given the offer of judgment made by Defendant Factory Direct Housing, Inc., dba Wholesale Manufactured Homes Direct,<sup>2</sup> and Plaintiff’s acceptance of that offer of judgment,<sup>3</sup> Plaintiff’s amendment of its complaint shall be limited to amending claims against parties other than Factory Direct Housing, Inc., dba Wholesale Manufactured Homes Direct.

DATED this 29th day of August, 2006.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner".

---

PAUL M. WARNER  
United States Magistrate Judge

---

<sup>2</sup> Docket no. 40.

<sup>3</sup> Docket no. 41.

James D. Gardner (8798)  
Snell & Wilmer  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101  
Telephone: (801) 257-1900  
Facsimile: (801) 257-1800

Attorneys for Defendants Fred Newcomb  
and Newcomb & Company

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

**AUG 29 2006**

MARKUS B. ZIMMER, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

THEODORE L. HANSEN, *et al.*,  
Plaintiffs,

vs.

NATIVE AMERICAN REFINERY  
COMPANY, *et al.*,  
Defendants

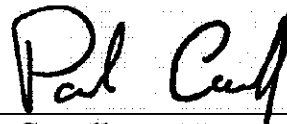
**ORDER FOR PRO HAC VICE  
ADMISSION**

Civil No. 2:06CV00109

Honorable Paul G. Cassell

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Stephen W. Grafman in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 29<sup>TH</sup> day of August, 2006.



Paul G. Cassell  
U.S. District Judge

FILED  
U.S. DISTRICT COURT

2006 AUG 29 P 1:44

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

1 THE COOPER CHRISTENSEN LAW FIRM, LLP  
2 Aaron M. Waite, Esq. (Utah Bar No. 8992)  
3 820 S. Valley View Blvd.  
4 Las Vegas, Nevada 89107  
(702) 435-4175  
Attorneys for Plaintiff

5 **IN THE UNITED STATES DISTRICT COURT**  
6 **FOR THE DISTRICT OF UTAH**

7 CRYSTAL PACIFIC FINANCIAL  
8 GROUP, LLC,

Plaintiff,

9 vs.

10 MICHAEL WHITEHEAD, an individual;  
11 EMILIE WHITEHEAD, an individual;  
12 UNITED STATES OF AMERICA; DOES  
13 1 - 10; and ROE CORPORATIONS 1 -  
14 10, inclusive,

Defendants.

Case No. 2:06-CV-00126 DB

**ORDER ON PLAINTIFF'S FOURTH  
MOTION TO ENLARGE TIME FOR  
FILING OPPOSITION AND REPLY**

16 **ORDER ON PLAINTIFF'S FOURTH MOTION TO ENLARGE TIME**  
17 **FOR FILING OPPOSITION AND REPLY**

18 PLAINTIFF'S FOURTH MOTION TO ENLARGE TIME FOR FILING OPPOSITION

19 AND REPLY having come before the Court, the Court having considered the Motion, and good  
20 cause appearing therefore,

21 IT IS HEREBY ORDERED THAT the time for Plaintiff to file an opposition to the  
22 Motion to Dismiss filed by the United States of America, and the time for Plaintiff to file a reply  
23 to the opposition filed by the United States of America to Plaintiff's Motion For: (1) Sale of  
24

25 \* \* \*


26 \* \* \*

THE COOPER CHRISTENSEN LAW FIRM, LLP  
820 South Valley View Blvd & Las Vegas, Nevada 89107  
Phone: 702.435.4175 & Fax: 702.877.7424




1 Property; (2) Waiver of Tax Liens Against Property; and (3) Expedited Decision or Hearing,  
2 shall be enlarged by 30 days or extended to the 28<sup>th</sup> day of September, 2006.

3 **IT IS SO ORDERED:**

4  
5   
6 UNITED STATES DISTRICT JUDGE, or  
7 UNITED STATES MAGISTRATE JUDGE,  
8  
9 DATED: 29 August 2006

10 Submitted By:  
11 THE COOPER CHRISTENSEN LAW FIRM, LLP

12   
13 Aaron M. Waite, Esq. (Utah Bar No. 8992)  
14 820 South Valley View Boulevard  
15 Las Vegas, NV 89121  
16 (702) 435-4175  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Judson T. Pitts (9946)  
Attorney for Plaintiff  
3760 So. Highland Dr. Suite 429  
Salt Lake City, Utah 84106  
Email: judsonpitts@hotmail.com  
Telephone: (801) 273-3955  
Fax: (801) 273-3352

FILED  
U.S. DISTRICT COURT

2006 AUG 29 A 10:38

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

STEPHIE M. SILL,

Plaintiff,

v.

JP MORGAN CHASE BANK, f/k/a  
BANK ONE

Defendants.

**ORDER FOR EXTENSION OF  
TIME FOR PLAINTIFF TO  
RESPOND TO DEFENDANT'S  
MOTION TO COMPEL  
ARBITRATION**

Jury Demanded

Civil No. : 2:06CV00191

Judge: Benson

---

Based on the agreement of the parties, IT IS HEREBY ORDERED that the deadline for Plaintiff Stephie Sill to file her response to the Defendant's Motion to Compel Arbitration in the above referenced case is extended to August 31<sup>st</sup>.

Dated 29<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Honorable Dee Benson  
U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

SCOTT MATTHEW CROWLEY,	)	
	)	
Petitioner,	)	Case No. 2:06-CV-210 TS
	)	
v.	)	District Judge Ted Stewart
	)	
MARK SHURTLEFF,	)	<b>O R D E R</b>
	)	
Respondent.	)	Magistrate Judge David Nuffer

---

Petitioner, Scott Matthew Crowley, filed a *pro se* petition for writ of *coram nobis*.<sup>1</sup> Although he does not identify the specific remedy he seeks, his petition addresses a Utah conviction. "It has long been settled in this circuit that federal courts have no jurisdiction to issue writs of *coram nobis* with respect to state criminal judgments."<sup>2</sup>

IT IS THEREFORE ORDERED that Petitioner's petition for writ of *coram nobis* is denied.

DATED this 29th day of August, 2006.

BY THE COURT:

  
TED STEWART  
United States District Court

---

<sup>1</sup>See [28 U.S.C.S. § 1651 \(2006\)](#).

<sup>2</sup>See [Davis v. Roberts, 425 F.3d 830, 836 \(10th Cir. 2005\)](#) (citing [Obado v. New Jersey, 328 F.3d 716, 718 \(3d Cir. 2003\)](#) (joining Fourth, Fifth, Seventh, and Tenth Circuits in holding "that *coram nobis* is not available in a federal court as a means of attack on a state criminal judgment"); Larry W. Yackle, [Postconviction Remedies § 35](#), at 162 (1981) ("The writ [of *coram nobis*] is available only in the sentencing court to petitioners challenging federal convictions and sentences.")).

FILED  
U.S. DISTRICT COURT

2006 AUG 28 P 3:25

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

DISTRICT OF UTAH

BY:   
DEPUTY CLERK

**ORDER**

SGW, a minor child, by and through  
her guardians and natural parents,  
SAW and SFW,

Plaintiffs,

vs.

GRANITE SCHOOL DISTRICT,

Defendant.

Case No. 2:06-cv-00338 JTG

Pursuant to the parties' Stipulation filed herewith, and for good cause shown:

IT IS HEREBY ORDERED as follows:

1. All medical records and investigation records produced in this case which relate to SGW shall be used solely for purposes of this litigation.

DATED this 28<sup>th</sup> day of August, 2006.

  
J. THOMAS GREENE  
U.S. District Court Judge

Jay Barnes (9874)  
Bradford D. Myler (7089)  
Attorney for Plaintiff  
1278 South 800 East  
Orem, UT 84097  
Telephone: (801) 225-6925  
Facsimile: (801) 225-8417

FILED  
U.S. DISTRICT COURT  
2006 AUG 28 P 5: 25  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

KIMBERLY STUBBS,  
Plaintiff,

v.

JO ANNE BARNHART  
CURRENT COMMISSIONER  
OF THE SOCIAL SECURITY  
ADMINISTRATION,  
Defendant,

CIVIL ACTION NO.  
2:06-cv-416

AMENDED  
SCHEDULING ORDER

The Court establishes the following scheduling order:

1. The answer of the Defendant is on file.
2. Plaintiff's brief should be filed by October 27, 2006.
3. Defendant's answer brief should be filed by November 27, 2006.
4. Plaintiff may file a reply brief by December 11, 2006.

DATED this 28<sup>th</sup> day of August 2006.

BY THE COURT:

  
United States District Court Judge

CARI ALLEN  
*Pro-Se*  
1199 South, 1500 East  
Bountiful, Utah 84010  
Telephone: 801-674-9659  
Facsimile: 801-397-1319

FILED  
U.S. DISTRICT COURT  
2006 AUG 28 P 5: 25  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

RECEIVED CLERK  
AUG 15 2006  
U.S. DISTRICT COURT  
2006 AUG 25 P 10: 59  
U.S. DISTRICT COURT  
DISTRICT OF UTAH

---

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

In re:  
LOG FURNITURE, INC.

Civil No. 2:06-cv-562  
Bankruptcy No. 03-38622 GEC  
(Chapter 7)  
BAP No. UT-06-050

Judge Dale A. Kimball

---

**ORDER EXTENDING TIME TO FILE OPENING BRIEF**

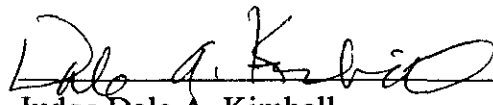
---

Based upon the Motion for Extension of Time to File a Response filed by Ms.  
Allen in this matter and for good cause shown, the Court now orders as follows:

The Motion is granted and the time for filing the opening brief is extended 1  
day to August 28, 2006.

.Dated This 25<sup>th</sup> day of August, 2006

BY THE COURT:

  
Judge Dale A. Kimball  
United States District Court

CERTIFICATE OF SERVICE

I hereby certify that on this 25<sup>th</sup> day of August, 2006, I caused a true and correct copy of the foregoing **ORDER EXTENDING TIME TO FILE OPENING BRIEF** to be sent to the following by first class U.S. Mail to the following:

Elizabeth Loveridge and Reid Lambert  
WOODBURY & KESLER,  
265 East 100 South, Suite 300  
P.O. Box 3358  
Salt Lake City, Utah 84110-3358

Ralph Petty  
10 W. Broadway, Suite 800  
Salt Lake City, Utah 84010

Laurie Cayton  
Office of the United States Trustee  
#9 Exchange Place, Suite 100  
Salt Lake City, Utah 84111

  
CARI ALLEN

8/25/06  
DATE

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

SHAWN ALLRED,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-566
	)	
v.	)	District Judge Dale A. Kimball
	)	
SOCIAL SECURITY ADMIN. et al.,	)	<b>O R D E R</b>
	)	
Defendants.	)	Magistrate Judge David Nuffer

---

Plaintiff, Shawn Allred, filed a *pro se* prisoner civil rights complaint.<sup>1</sup> The Court has already granted Plaintiff's request to proceed without prepaying the entire filing fee.

Even so, Plaintiff must eventually pay the full \$350.00 filing fee required.<sup>2</sup> Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."<sup>3</sup> Under this formula, Plaintiff must pay \$5.72. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee, the complaint will be dismissed.

Plaintiff must also complete the attached "Consent to Collection of Fees" form and submit the original to the inmate

---

<sup>1</sup>See 42 U.S.C.S. § 1983 (2006).

<sup>2</sup>See 28 *id.* § 1915(b)(1).

<sup>3</sup>*Id.*



funds accounting office and a copy to the Court within thirty days so the Court may collect the balance of the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Although the Court has already granted Plaintiff's application to proceed *in forma pauperis*, Plaintiff must still eventually pay \$350.00, the full amount of the filing fee.

(2) Plaintiff must pay an initial partial filing fee of \$5.72 within thirty days of the date of this Order, or his complaint will be dismissed.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

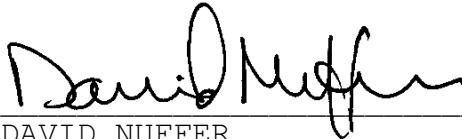
(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 25th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Nuffer", is written over a horizontal line.

DAVID NUFFER  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Shawn Allred (Case No. 2:06-CV-566 DAK), understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Shawn Allred, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of \$5.72, which is 20% of the greater of:

- (a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or
- (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

---

Signature of Inmate  
Shawn Allred

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

SHAWN ALLRED,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-575 TS
	)	
v.	)	District Judge Ted Stewart
	)	
DON TAYLOR et al.,	)	<b>O R D E R</b>
	)	
Defendants.	)	Magistrate Judge Brooke Wells

---

Plaintiff, Shawn Allred, filed a *pro se* prisoner civil rights complaint.<sup>1</sup> The Court has already granted Plaintiff's request to proceed without prepaying the entire filing fee.

Even so, Plaintiff must eventually pay the full \$350.00 filing fee required.<sup>2</sup> Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."<sup>3</sup> Under this formula, Plaintiff must pay \$5.72. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee, the complaint will be dismissed.

Plaintiff must also complete the attached "Consent to Collection of Fees" form and submit the original to the inmate

---

<sup>1</sup>See 42 U.S.C.S. § 1983 (2006).

<sup>2</sup>See 28 *id.* § 1915(b)(1).

<sup>3</sup>*Id.*

funds accounting office and a copy to the Court within thirty days so the Court may collect the balance of the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Although the Court has already granted Plaintiff's application to proceed *in forma pauperis*, Plaintiff must still eventually pay \$350.00, the full amount of the filing fee.

(2) Plaintiff must pay an initial partial filing fee of \$5.72 within thirty days of the date of this Order, or his complaint will be dismissed.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

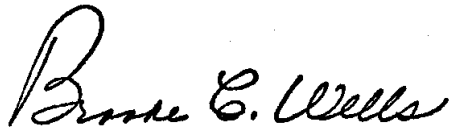
(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 29th day of August, 2006.

BY THE COURT:

A handwritten signature in cursive script, reading "Brooke C. Wells". The signature is written in black ink and is positioned above a horizontal line.

BROOKE C. WELLS  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Shawn Allred (Case No. 2:06-CV-575 TS), understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Shawn Allred, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of \$5.72, which is 20% of the greater of:

- (a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or
- (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

---

Signature of Inmate  
Shawn Allred

---

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

MAEZ,

Plaintiff,

vs.

WASATCH BAKER BLOCK ADMIN. et al.,

Defendants.

ORDER OF REFERENCE

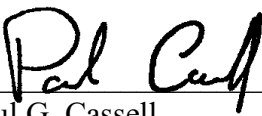
Civil No. 2:06-CV-00710 PGC

---

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this Court, the above entitled case is referred to Magistrate Judge Brooke Wells. The magistrate judge is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 29th day of August, 2006.

BY THE COURT:

  
\_\_\_\_\_  
Paul G. Cassell  
United States District Judge



---

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

John A. Campbell,

Plaintiff,

vs.

Municipality of Hackensak, NJ,

Defendant.

ORDER OF REFERENCE

Civil No. 2:06-cv-713 DB

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this Court, the above entitled case is referred to Magistrate Judge Alba. The magistrate judge is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 28 day of August, 2006.

BY THE COURT:



DEE BENSON  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT

JASON SCOTT TYLER,  
  
Plaintiff,  
  
v.

)  
)  
) Case No.  
)  
)

2006 AUG 28 P 4: 35

DISTRICT OF UTAH

BY: DEPUTY CLERK

SHERIFF KENNARD et al.,  
  
Defendants.

Judge Dale A. Kimball  
DECK TYPE: Civil  
DATE STAMP: 08/28/2006 @ 16:41:14  
CASE NUMBER: 2:06CV00721 DAK

Plaintiff/inmate, Jason Scott Tyler, submits a *pro se* civil rights case.<sup>1</sup> Plaintiff applies to proceed without prepaying his filing fee.<sup>2</sup> However, Plaintiff has not as required by statute submitted "a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint . . . obtained from the appropriate official of each prison at which the prisoner is or was confined."<sup>3</sup>

IT IS HEREBY ORDERED that Plaintiff's application to proceed without prepaying his filing fee is granted.

So that the Court may calculate Plaintiff's initial partial filing fee, IT IS ALSO ORDERED that Plaintiff shall have thirty days from the date of this Order to file with the Court a certified copy of his inmate trust fund account statement(s). If

---

<sup>1</sup>See 42 U.S.C.S. § 1983 (2006).

<sup>2</sup>See 28 *id.* § 1915.

<sup>3</sup>See *id.* § 1915(a)(2) (emphasis added).

Plaintiff was held at more than one institution during the past six months, he shall file certified trust fund account statements (or institutional equivalent) from the appropriate official at each institution where he was confined. The trust fund account statement(s) must show deposits and average balances for each month. If Plaintiff does not fully comply, his complaint will be dismissed.

DATED this 28<sup>th</sup> day of August, 2006.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Paul M. Warner", is written over a horizontal line.

PAUL M. WARNER  
United States Magistrate Judge

**FILED**

CLERK, U.S. DISTRICT COURT

August 28, 2006 (11:47am)

DISTRICT OF UTAH

# United States District Court

## CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

V.

**ORDER SETTING  
CONDITIONS OF RELEASE**

ROBERT JOHN HINDMAN

Case Number: N-06-265 M

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

PLACE

on

DATE AND TIME

**Release on Personal Recognizance or Unsecured Bond**

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- ( ) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$ )

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

**Additional Conditions of Release**

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- ( ) (6) The defendant is placed in the custody of:  
(Name of person or organization)  
(Address)  
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: \_\_\_\_\_

Custodian or Proxy

(✓)(7) The defendant shall:

- (✓)(a) maintain or actively seek employment.
- ( ) (b) maintain or commence an educational program.
- (✓)(c) abide by the following restrictions on his personal associations, place of abode, or travel:  
maintain residence at the address reported to PTS. No change without prior permission of PTS.
- ( ) (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
- (✓)(e) report on a regular basis to the supervising officer as directed.
- ( ) (f) comply with the following curfew:
- ( ) (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
- (✓)(h) refrain from any use of alcohol within 6 hours of flight upon any aircraft.
- ( ) (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
- ( ) (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
- ( ) (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
- ( ) (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
- ( ) (m) execute a bail bond with solvent sureties in the amount of \$
- ( ) (n) return to custody each (week)day as of \_\_\_\_\_ o'clock after being released each (week)day as of \_\_\_\_\_ o'clock for employment, schooling or the following limited purpose(s):
- ( ) (o) surrender any passport to
- ( ) (p) obtain no passport
- ( ) (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
- ( ) (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
- ( ) (s) submit to an electronic monitoring program as directed by the supervising officer.
- ( ) (t)

**Advice of Penalties and Sanctions**

TO THE DEFENDANT:

**YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:**

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

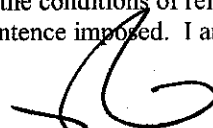
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

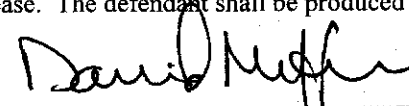
A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

**Acknowledgment of Defendant**

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

\_\_\_\_\_  
Signature of Defendant\_\_\_\_\_  
Address\_\_\_\_\_  
City and State\_\_\_\_\_  
Telephone**Directions to the United States Marshal**

- (☒) The defendant is ORDERED released after processing.
- ( ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: August 28, 2006\_\_\_\_\_  
Signature of Judicial OfficerMagistrate Judge David Nuffer\_\_\_\_\_  
Name and Title of Judicial Officer

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	ORDER FOR SUPPLEMENTAL
	)	PROCEEDING
vs.	)	
	)	
LARRY D. THATCHER,	)	Case No. 2:92CR00161-002
	)	
Defendant,	)	Honorable Dee V. Benson

---

THE UNITED STATES OF AMERICA TO DEFENDANT LARRY D. THATCHER:

IT IS ORDERED that, pursuant to the foregoing motion, and good cause appearing, you appear in person before United States Magistrate Judge Alba of this court at the time and place shown below to answer questions under oath concerning your property.

DATE: October 26, 2006  
TIME: 9:00 a.m.  
PLACE: Room 260, U.S. Courthouse  
350 South Main Street  
Salt Lake City, Utah

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending the hearing.

If you have been personally served with this order and you fail to appear, the court may order a warrant for your arrest.

DATED this 28<sup>th</sup> day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Dee Benson", written over a horizontal line.

Dee V. Benson, Chief Judge  
United States District Court

416.WP